

AGENDA TITLE: Public Hearing to consider the Planning Commission's recommendation that the SPARC Committee's authority **be** extended to include non-residential **new** construction and remodel projects in M-1 and M-2 zones and to expand the definition of "Material Alteration,"

MEETING DATE: November 18, 1992


PREPARED BY: Community Development Director

RECOMMENDED ACTION: That the City Council conduct a Public Hearing to consider the Planning Commission's recommendation that the SPARC Committee's authority be extended to include non residential **new** construction and remodel projects in M-1 and M-2 zones and to expand **the** definition of "Material Alteration."

BACKGROUND INFORMATION: The proposed amendments were generated **by** discussions amongst the members of the Planning Commission and were viewed as needed changes to insure the orderly development of industrial areas. It does not appear that these amendments will increase the amount of time required to obtain a building permit for a **proposed** project in an industrial zone. The SPARC review can **be** accomplished, in most rases, while the construction plans are in plan check.

Enclosed *is* a copy of the City Attorney's memorandum of August 4, 1992 as well as the amendments recommended **by** the Planning Commission.

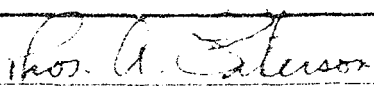
FUNDING: None required.


James B. Schroeder
Community Development Director

JBS/cg

Attachments

APPROVED



THOMAS A. PETERSON
City Manager



recycled paper

CC-1

CITY OF LODI
MEMORANDUM FROM THE OFFICE OF THE CITY ATTORNEY

To: Members of the Lodi Planning Commission
From: Bob McNatt, City Attorney
Date: August 4, 1992
Subject: SPARC ORDINANCE AMENDMENT

At the Planning Commission meeting of July 27, 1992, a discussion occurred on the amendment of Lodi Municipal Code Chapter 17.81 addressing the authority of SPARC to regulate exterior colors on designated types of property. Staff was directed to return this matter to the Planning Commission at its August 24, 1992 meeting for further consideration.

I must candidly admit that until that meeting, I had no idea SPARC reviewed and acted upon color choices for the exterior of projects subject to review. As I stated that evening, such review can legally be done, but is required to be done under explicit guidelines for determining the appropriateness of colors proposed. It is recommended that the Commission consider the attached amendment to Chapter 17.81 and forward it to the City Council for action. This amendment would authorize the Council, the Planning Commission, and/or SPARC to formally adopt such written guidelines for regulation of exterior colors.

In doing so, we will need to also change slightly the earlier draft of Section 17.81.030. It would now designate that "material alteration" of buildings could include changes in exterior colors under some circumstances.

The proposed amendment of Section 17.81.060 would explicitly authorize the Council, Planning Commission, and SPARC to adopt criteria for the painting or repainting of the exterior of subject properties.

It was suggested that the City require deed restrictions ("CCR's") to control repainting or changes of colors. I have always felt that CCR's are not a particularly effective way of enforcing conditions from the City's perspective. This is because CCR's are usually enforceable only by parties to the deed in which they are contained. This is referred to as "privity" meaning a direct legal link in the chain of title.

In most cases, CCR's bind only the seller, the buyer, and designated successors in interest, i.e., parties who now or at one time did own an interest in the land subject to the CCR's (Civil Code Section 1486). Or, as stated in Title Insurance and Trust Co. v. Ritchardson (1928) 266 P. 570, "Restrictions in deeds ... were enforceable by one grantee against another grantee of a common grantor." Since in most cases, the City was neither grantee nor grantor under the deed, our authority to enforce CCR's is suspect in my opinion.

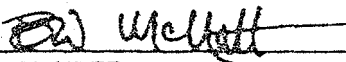
Planning Commission Members
August 4, 1992
Page Two

There are some odd situations where courts have allowed enforcement of CCR's by outside third parties, but these are unusual and don't seem to fit our situation. This usually occurs where a homeowners' association, which owns no land under a deed, asserts conditions or restrictions on behalf of other property owners.

In any event, I have included in the draft of Section 17.81.060 a provision allowing SPARC to require such CCR's, if desired. This might be useful in allowing other property owners to enforce color restrictions where a parcel is being split or subdivided.

Assuming that the Council adopts the amendment as proposed, it will be necessary for SPARC and/or the Planning Commission to establish written guidelines controlling external color selection for buildings subject to the SPARC ordinance. I would be happy to assist in drafting these standards and criteria.

Respectfully submitted,



BOB McNATT
City Attorney

EM:vc

cc: Community Development Director
Members of SPARC

PCSPARC.2/TXTA.01V

DRAFT ORDINANCE

DRAFT 2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
REPEALING AND REENACTING LODI MUNICIPAL CODE SECTION 17.81.030,
AND AMENDING SECTION 17.81.060 (A)
RELATING TO SITE PLAN AND ARCHITECTURAL APPROVALS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Lodi Municipal Code Chapter 17.81 - SITE PLAN AND
ARCHITECTURAL APPROVAL- Section 17.81.030 relating to required
Committee approvals is hereby repealed and reenacted in its entirety to
read in full as follows:

Section 17.81.030. Required.

Site plan and architectural approval is required for the
following uses:

A. New construction.

1. Residential building proposed to be erected in areas
zoned R-GA, R-MD, R-HD, R-C-P, C-1 and C-2, except
single-family dwellings, duplexes and triplexes.
2. Commercial-professional offices and institutional
buildings proposed to be erected in areas zoned R-C-P and
C-1.
3. Nonresidential buildings proposed to be erected in
areas zoned C-1, C-2 and C-M.

4. Nonresidential buildings proposed to be erected in areas zoned M-1 and M-2.

5. Any use requiring a use permit.

B. Remodels and additions.

1. Additions to or remodels of any building described in paragraph "A" above, where cost of reconstruction or remodel would reasonably exceed the amounts specified in Section 15.44.040 of this Code.

2. Additions to or remodels of any building described in paragraph "A" above, which will materially alter the exterior appearance of such building, as determined by the Community Development Director. Such material alterations may include but are not limited to changes in or additions of siding, facades, masonry work, awnings, and changes in exterior colors. However, repainting alone, with original colors previously approved by SPARC, shall not be deemed a material alteration.

3. Additions to or remodels of any building for a use which originally required a use permit.

SECTION 2. Lodi Municipal Code Section 17.81.060 - Committee action
- subsection (A) is amended to read in full as follows:

Section 17.81.060. Committee action.

A. The approval committee shall have the authority to approve, disapprove, or approve subject to any reasonable conditions it deems necessary, all applications for the exterior design, exterior colors, and site plans for proposed new buildings or structures for which site plan and architectural review are required. Conditions which the review committee may impose include, but are not limited to:

1. Policies adopted by City Council resolution or ordinance.

2. Recordation or adoption of covenants, conditions, and restrictions regulating the appearance of the subject property.

3. Restrictions based on written criteria adopted by SPARC on the color schemes for the painting or repainting of the exteriors of subject properties.

4. Such other and further standards or conditions as may be formally adopted by SPARC and/or the Planning Commission.

(B) (Remains the same.)



CITY OF LODI
CARNEGIE FORUM
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: November 4, 1992

Time: 7:30 p.m.

For information regarding this Public Hearing
Please Contact:

Alice M. Reimche
City Clerk
Telephone: 333-6702

NOTICE OF PUBLIC HEARING

November 4, 1992

NOTICE IS HEREBY GIVEN that on Wednesday, at the hour of 7:30 p.m., of as soon thereafter as the matter may be heard, the City Council will conduct a public hearing to consider the following matter:

- a) to consider the Planning Commission's recommendation that the Site Plan and Architectural Review Committee's authority be extended to include non-residential new construction and remodel projects in the M-1 and EI-2 zones and to expand the definition of "material alteration".

Information regarding this item may be obtained in the office of the Community Development Director at 221 West Pine Street, Lodi, California. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the hearing scheduled herein. and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the Public Hearing.

By Order Of the Lodi City Council:

Alice M. Reimche
Alice M. Reimche
City Clerk

October 7, 1992

Dated:

Approved as to form:

Bobby W. McCall
Bobby W. McCall
City Attorney



CITY OF LODI

CARNEGIE FORUM
305 West Pine Street, Lodi

CONTINUED

NOTICE OF PUBLIC HEARING

Date: November 18, 1992

Time: 7:30 p.m.

For information regarding this Public Hearing
Please Contact:

Alice M. Reimche
City Clerk

Telephone: 333-6702

NOTICE OF PUBLIC HEARING

November 18, 1992

NOTICE IS HEREBY GIVEN that on Wednesday, at the hour of 7:30 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a continued public hearing to consider the following matter:

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By Order Of the Lodi City Council:

Alice M. Reimche
Alice M. Reimche
City Clerk

Dated: November 4, 1992

Approved as to form:

Bobby W. McCall
Bobby W. McCall
City Attorney

ORDINANCE NO. 1561

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
REPEALING AND REENACTING LODI MUNICIPAL CODE SECTION 17.81.030,
AND AMENDING SECTION 17.81.060 (A)
RELATING TO SITE PLAN AND ARCHITECTURAL APPROVALS.

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SECTION 2. Lodi Municipal Code Section 17.81 060 - Committee action

- subsection (A) is amended to read in full as follows

Section 17.81.060. Committee action.

A. The approval committee shall have the authority to approve, disapprove, or approve subject to any reasonable conditions it deems necessary, all applications for the exterior design, exterior colors, and site plans for proposed new buildings or structures for which site plan and architectural review are required. Conditions which the review committee may impose include, but are not limited to:

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3. Restrictions based on written criteria adopted by SPARC on the color schemes for the painting or repainting of the exteriors of subject properties.

4. Such other and further standards or conditions as may be formally adopted by SPARC and/or the Planning Commission.

(B) (Remains the same.)

SECTION 3. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 4. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this . day of

JAMES W. PINKERTON, JR.
Mayor

Attest:

ALICE M. REIMCHE
City Clerk

=====
State of California
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1561 was introduced at a regular meeting of the City Council of the City of Lodi held November 18, 1992 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 1992 by the following vote:

Ayes: Council Members -
Noes: Council Members
Absent: Council Members -
Abstain: Council Members .

I further certify that Ordinance No. 1561 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

ALICE M. REIMCHE
City Clerk

Approved as to Form

BOBBY W. McNATT
City Attorney

(2)
ORD1561/TXTA.01V